



Not Reported in F.Supp.2d, 2003 WL 21293767 (E.D.Pa.)
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Exhibit C

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United States District Court,
E.D. Pennsylvania.
VECTOR SECURITY, INC.

v.
Simeon L. CORUM
No. Civ.A. 03-741.

March 21, 2003.

MEMORANDUM

[BARTLE, J.](#)

*1 Plaintiff Vector Security, Inc. (“Vector”) has brought this diversity fraud action against defendant Simeon L. Corum (“Corum”). Before the court is the motion of Corum to dismiss for lack of personal jurisdiction under [Rule 12\(b\)\(2\) of the Federal Rules of Civil Procedure](#) and for failure to state a claim upon which relief can be granted under [Rule 12\(b\)\(6\) of the Federal Rules of Civil Procedure](#).

I.

The plaintiff bears the burden of establishing with reasonable particularity contacts sufficient to support the court's exercise of personal jurisdiction once the defendant has raised the issue. See [Provident Nat'l Bank v. Calif. Fed. Sav. & Loan Ass'n](#), 819 F.2d 434, 437 (3d Cir.1987). General averments in an unverified complaint or response without the support of “sworn affidavits or other competent evidence” are insufficient to establish jurisdictional facts. [Time Share Vacation Club v. Atl. Resorts, Ltd.](#), 735 F.2d 61, 66 n. 9 (3d Cir.1984). Otherwise, for the purposes of this motion, we must accept all of the substantive allegations in Vector's complaint as true and construe disputed facts related to those claims in its favor. [Imo Indus., Inc. v. Kiekert AG](#), 155 F.3d 254, 257 (3d Cir.1998); [Carteret Sav. Bank, FA v. Shushan](#), 954 F.2d 141, 142 n. 1 (3d Cir.1992).

We accept as true the following facts for present purposes. Vector is a Pennsylvania corporation engaged in the business of selling, installing and ser-

ving electronic security alarm and fire detection systems for residential and commercial premises. Its corporate headquarters are located in Plymouth Meeting, Pennsylvania. Defendant Corum is a citizen of the state of Maryland. During the events that give rise to this litigation, Corum served as a computer information specialist and collection manager for Nightwatch, Incorporated, Night Eye, Inc. or Fidelity Protection Agency, Inc. (collectively referred to as “Nightwatch”). Nightwatch had contracts with several thousand customers to provide security services. As collection manager, Corum was responsible for supervising Nightwatch's employees who worked in accounts receivable. Those employees communicated with customers by telephone and mail in order to collect on the accounts. Corum also was responsible for addressing issues that arose in connection with a customer's cancellation of a contract.

During the summer of 2001, Vector and Nightwatch entered into negotiations for Vector to purchase Nightwatch's customer contracts. On August 3, 2001, Vector purchased more than 13,000 customer contracts from Nightwatch for a price in excess of eighteen million dollars. Prior to consummating the acquisition, Vector conducted a due diligence review of the customer contracts, including whether any had been cancelled. As part of this effort, Corum sent at least nine electronic mail messages to Vector personnel in Pennsylvania which contained customer information related to the contracts. In addition, Corum directed other employees of Nightwatch to transmit at least sixteen additional electronic mail messages to Vector in Pennsylvania with similar customer information.

*2 After the closing of the deal between Vector and Nightwatch, Vector conducted additional due diligence. According to the affidavit of plaintiff's Vice President Vincent DiValerio, Vector discovered that Corum's electronic mail messages and the messages sent at his behest had concealed from Vector evidence of hundreds of oral and written cancellations of customer contracts that Nightwatch had received prior to the closing of the acquisition. Vector maintains that had it known about those cancellations, it would not have acquired the contracts on the agreed upon terms and conditions.

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II.

A federal district court may assert personal jurisdiction over a nonresident defendant such as Corum to the extent authorized by the law of the state in which the action is brought, consistent with the demands of the Constitution. See Provident, 819 F.2d at 436 (citing Fed.R.Civ.P. 4(e)). Pennsylvania law permits courts to “exercise personal jurisdiction over nonresident defendants to the constitutional limits of the due process clause of the fourteenth amendment.” Mellon Bank (East) PSFS, Nat’l Ass’n v. Farino, 960 F.2d 1217, 1221 (3d Cir.1992) (citations omitted); see also 42 Pa. Cons.Stat. Ann. § 5322(b). The Pennsylvania long-arm statute specifically provides for personal jurisdiction over a person “[c]ausing harm or tortious injury in this Commonwealth by an act or omission outside this Commonwealth.” 42 Pa. Cons.Stat. Ann. § 5322(a)(4).

Vector contends that Corum is subject to specific personal jurisdiction within Pennsylvania. “Specific personal jurisdiction exists when the defendant has ‘purposefully directed his activities at residents of the forum and the litigation results from alleged injuries that ‘arise out of or related to’ those activities.’” BP Chems. Ltd. v. Formosa Chem. & Fibre Corp., 229 F.3d 254, 259 (3d Cir.2000) (quoting Burger King Corp. v. Rudzewicz, 471 U.S. 462, 472 (1985)). For a court properly to exercise specific jurisdiction under the Due Process Clause, the plaintiff must satisfy a two-part test. See Imo Indus., 155 F.3d at 259. First, the plaintiff must demonstrate that the defendant had the constitutionally sufficient “minimum contacts” with the forum. *Id.*; see Burger King, 471 U.S. at 474. Second, the court, in its discretion, must determine that the exercise of specific jurisdiction is consistent with “traditional notions of fair play and substantial justice.” Int’l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) (citations omitted); see Imo Indus., 155 F.3d at 259.

A defendant may be said to have established “minimum contacts” if there is “some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State,” thus ensuring that “a defendant will not be haled into a jurisdiction solely as a result of ‘random,’ ‘fortuitous,’ or ‘attenuated’ contacts.” Burger King, 471 U.S. at 475 (citations omitted); Keeton v. Hustler Magazine,

Inc., 465 U.S. 770, 774 (1984); World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 299 (1980).

*3 Since Vector has asserted an intentional tort claim against Corum, we must consider the impact of the Supreme Court’s decision in Calder v. Jones, 465 U.S. 783 (1984), on the minimum contacts analysis. In Calder, the plaintiff, an entertainer living and working in California, brought a defamation action in a California state court against the National Enquirer, one of its writers, and one of its editors for an article accusing her of having difficulties with alcohol. The National Enquirer had its largest circulation in that state. The individual defendants were residents of Florida, the forum in which the article was researched, written, reviewed and approved. Both individuals moved to dismiss plaintiff’s action for lack of personal jurisdiction. In upholding the exercise of jurisdiction, the Supreme Court explained:

The allegedly libelous story concerned the California activities of a California resident. It impugned the professionalism of an entertainer whose television career was centered in California. The article was drawn from California sources, and the brunt of the harm, in terms both of respondent’s emotional distress and the injury to her professional reputation, was suffered in California. In sum, California is the focal point both of the story and of the harm suffered. Jurisdiction over petitioners is therefore proper in California based on the “effects” of their Florida conduct in California.... [T]heir intentional, and allegedly tortious, actions were expressly aimed at California. Petitioner South wrote and petitioner Calder edited an article that they knew would have a potentially devastating impact upon respondent. And they knew that the brunt of that injury would be felt by respondent in the State in which she lives and works and in which the National Enquirer has its largest circulation.

Calder, 465 U.S. at 788-90 (citations and footnote omitted).

The Third Circuit in Imo Industries had occasion to interpret the “effects test” established in Calder. It held that a court may exercise personal jurisdiction only if:

- (1) The [nonresident] defendant committed an in-

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tentional tort;

(2) The plaintiff felt the brunt of the harm in the forum such that the forum can be said to be the focal point of the harm suffered by the plaintiff as a result of that tort;

(3) The defendant expressly aimed his tortious conduct at the forum such that the forum can be said to be the focal point of the tortious activity.

[155 F.3d at 265-66](#) (footnote omitted). Proof of these three elements would “enhance otherwise insufficient contacts with the forum such that the ‘minimum contacts’ prong of the Due Process test is satisfied.” *Id.* at 260 (citing *Keeton*, 465 U.S. at 780).

In *Imo Industries*, the court rejected plaintiff’s argument that the defendant, a German corporation, had “expressly aimed” its conduct toward New Jersey, plaintiff’s headquarters and selected forum.^{FN1} [155 F.3d at 267](#). The plaintiff corporation had brought a tortious interference with contract claim against defendant, alleging that defendant’s promise to revoke its license agreement with plaintiff’s Italian subsidiary prevented plaintiff from consummating the sale of that entity. Letters from the defendant regarding the possible revocation of the license were sent only to New York and Italy, although they were later forwarded by plaintiff’s investment banker to plaintiff’s headquarters in New Jersey. *Id.* at 257-58. The meetings between the parties took place in Canada and Germany, and phone calls between New Jersey and Germany were all initiated by the plaintiff, not the defendant. *Id.* at 258. While conceding that the defendant may have known that its conduct would have effects in New Jersey, the court found that the actual behavior of the defendant was not directed toward New Jersey nor had defendant “expressly aimed its tortious conduct” at the state. *Id.* at 268.

^{FN1}. Having found that plaintiff failed to prove the third prong of the test, the court refrained from addressing whether the “brunt of the harm” was suffered in New Jersey.

*4 In analyzing the case before us, we apply the three-prong test in *Imo Industries*. Vector has asserted that Corum committed the intentional tort of fraud. Therefore, it satisfies the first prong of the *Imo Industries* test. Furthermore, Vector, “felt the brunt of

the harm” in Pennsylvania where it had its corporate headquarters. *Id.* at 265. No other location for the alleged harm is suggested. Thus, Vector has met the second prong of *Imo Industries*. The third prong requires us to determine whether Corum “expressly aimed his tortious conduct” at Pennsylvania so that it was “the focal point of the tortious activity.” *Id.* at 266. Corum clearly did so. He sent nine electronic mail messages to Vector in the Commonwealth and directed the sending of an additional sixteen electronic mail messages here by other Nightwatch employees. Corum certainly knew that Vector’s corporate headquarters was located in Pennsylvania where it would be making the decision whether or not to purchase the service contracts.

The Court of Appeals’ decision in *Remick v. Manfredy*, 238 F.3d 248 (3d Cir.2001), supports our conclusion. In that case, a Philadelphia lawyer filed suit in the Eastern District of Pennsylvania against an Illinois law firm and two of its lawyers, among others, as a result of a dispute following a client’s discharge of the Philadelphia lawyer and the engagement of the Illinois firm. In *Remick*, the Third Circuit held that this court had personal jurisdiction over two individual defendants as to plaintiff’s tortious interference with contract claim. *Id.* at 260. To support this determination, the Court of Appeals relied in large part on the fact that plaintiff had “conducted the majority of his negotiation, consultation, and advice services” out of his Philadelphia office in connection with the contract between him and his client. *Id.* The defendants in *Remick* clearly knew that plaintiff was a citizen of Pennsylvania and that by interfering with a contract between him and his client they would be causing him injury within the Commonwealth. Such is the case here as well. As noted above, Corum knew that Vector’s corporate headquarters was situated in the forum and that any injury to it would be felt here.

As for the second factor in our analysis, the burden is on defendant Corum to establish the absence of fairness or lack of substantial justice. *Burger King*, 471 U.S. at 477; *Grand Entertainment Group, Ltd. v. Star Media Sales, Inc.*, 988 F.2d 476, 483 (3d Cir.1993); *Mellon Bank*, 960 F.2d at 1226. He has not done so. He has not demonstrated why this court would be an unfair place to litigate or why it would be a lack of substantial justice for him to have to proceed in this district.

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Accordingly, we will deny the motion to dismiss of defendant Simeon Corum on the basis of lack of personal jurisdiction.

III.

For purposes of defendant's motion to dismiss for failure to state a claim upon which relief can be granted, we accept as true the well-pleaded factual allegations in the amended complaint and draw in plaintiff's favor any reasonable inferences therefrom. See [Hishon v. King & Spalding](#), 467 U.S. 69, 73 (1984); [Oshiver v. Levin, Fishbein, Sedran & Berman](#), 38 F.3d 1380, 1391 (3d Cir.1994). Of course, we need not accept bald assertions or legal conclusions. [Morse v. Lower Merion Sch. Dist.](#), 132 F.3d 902, 906 (3d Cir.1997).

*5 Corum's motion to dismiss merely contends that plaintiff has failed to state a claim upon which relief can be granted. He provides no explanation why plaintiff's fraud claim is in any way deficient. Nor does he provide the court with a memorandum of law in support of his motion to dismiss, as required under Local Civil Rule 7.1(c).

Under Pennsylvania law, in order to set forth a claim of fraud, a plaintiff must allege:

- (1) a representation;
- (2) which is material to the transaction at hand;
- (3) made falsely, with knowledge of its falsity or recklessness as to whether it is true or false;
- (4) with the intent of misleading another into relying on it;
- (5) justifiable reliance on the misrepresentation; and
- (6) the resulting injury was proximately caused by the reliance.

[Gibbs v. Ernst](#), 647 A.2d 882, 889 (Pa.1994) (footnote and citations omitted). Vector's complaint alleges each of these elements. We also note that Vector has pleaded fraud with particularity and thus satisfies the requirement of [Rule 9\(b\) of the Federal Rules of Civil Procedure](#).

We will deny the motion of defendant Simeon Corum to dismiss plaintiff's complaint for failure to state a claim upon which relief can be granted.

ORDER

AND NOW, this day of March, 2003, for the reasons set forth in the accompanying Memorandum, it is hereby ORDERED that:

- (1) the motion of defendant Simeon L. Corum to dismiss this action for lack of personal jurisdiction is DENIED; and
- (2) the motion of defendant Simeon L. Corum to dismiss this action for failure to state a claim upon which relief can be granted is DENIED.

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